IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

I.T.R. No.61 of 1991
Date of decision: September ___, 2006

Commissioner of Income Tax, Rohtak.

-----Applicant

Vs.

Shri Prem Chand Prop.

-----Respondent

CORAM:- HON'BLE MR JUSTICE ADARSH KUMAR GOEL
HON'BLE MR JUSTICE RAJESH BINDAL

Present: Mr. Yogesh Putney, Advocate
for the revenue..

ORDER:

Following question of law has been referred for opinion of this Court by the Income Tax Appellate Tribunal, Delhi, arising out of its order dated 27.10.1990 in respect of assessment year 1984-85:-

> "Whether on the facts and in the circumstances of the case, the Tribunal was right in law in holding that rectification of an assessment made u/s 143(1) of the I.T. Act, 1961 cannot be made u/s 154, for disallowing of Rs.33,820/- being sales tax collected but paid after the date of the accounting year and by invoking of section 43B of the Act?"

The facts as noticed in the statement of case are as under:-

The assessment in the case of the assessee Shri Prem Chand Prop. was completed under Section 143(1) of the Income-tax Act, 1961 (for short, "the Act"). The Assessing Officer issued a notice under Section 154 of the Act seeking to rectify the order passed under section 143(1) of the Act to the extent of liability

that was allowed under Section 43 of the Act in regard to sales tax. The basis of invoking the section 154 was that the amount of sales-tax was not deposited or paid within the accounting period relevant to the assessment. The objection of the assessee was considered that was rejected by the Assessing Officer on the ground that he was very much clear on the point to allow deduction only on the amount of sales-tax is paid.

The assessing authority in the present case levied the tax holding the amendment in Section 43B of the Act to be prospective.

The view taken by the Assessing Officer was reversed by the CIT(A) which order was upheld by the Tribunal.

We find that even on merits about the allowability of the deduction, the issue stands covered in favour of the assessee by the judgment of the Hon'ble Supreme Court in ***Allied Motors (P) Ltd. v. Commissioner of Income-tax*** (1997) 224 ITR 677, wherein it was held that claim towards payment of sales tax could not be disallowed only on the ground that the liability was met after the end of the accounting year. The Hon'ble Supreme Court took into account the amendment made to Section 43B of the Act and held that the said amendment was retrospective being clarificatory.

Accordingly, the question raised is decided against the revenue and in favour of the assessee.

(ADARSH KUMAR GOEL)
JUDGE

September ___, 2006 **(RAJESH BINDAL)**
ashwani **JUDGE**